

STATE OF MICHIGAN  
COURT OF APPEALS

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In re CHESTER GALA TRUST.

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ROBERT W. KIRK, as Successor Trustee of the  
CHESTER GALA TRUST,

UNPUBLISHED  
October 28, 2014

Appellee,

v

No. 321738  
Macomb Probate Court  
LC No. 2013-211543-TV

ERIC GALA,

Appellant,

and

ANTHONY M. GALA, ERIC J. GALA,  
JEFFREY A. GALA, BRITTANY GALA,  
GARRITT GALA, CHRISTIAN GALA,  
CHESTER R. GALA, NORMA GALA, and  
LASALLE BANK,

Interested Parties.

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Before: BOONSTRA, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Respondent Eric Gala, proceeding *in propria persona*, appeals by right the trial court's order approving the sale of real property owned by the Chester Gala Trust. We affirm.

Respondent's appeal concerns the sale of a parcel of real estate located in Lake Orion and owned by the Chester Gala Trust. Chester Gala ("Chester") and Norma Gala ("Norma") divorced in December, 2005. Under the terms of a divorce judgment, the property was to be sold, and the proceeds were to be distributed equally to Chester and Norma. But the property was not sold. On December 4, 2013, appellee, Robert W. Kirk ("petitioner"), was appointed successor conservator of Chester and of Norma. On January 24, 2014, petitioner was appointed successor trustee of the Chester Gala Trust and of the Norma Gala Trust. On March 11, 2014, petitioner filed a petition in the probate court seeking approval to sell the property to Tiburon

Orion, LLC for \$700,000. On April 10, 2014, respondent objected to the petition, arguing that the sale price was under the value of the property and that the sale was not in Chester's and Norma's best interests. Respondent requested time to obtain his own appraisal of the property.

A hearing was scheduled on the petition on April 11, 2014; however, it was adjourned until April 24, 2014. On April 16, 2014, the trial court entered a stipulated order, stating in part:

IT IS HEREBY ORDERED that the Successor Trustee is authorized to execute the First Amendment to the Purchase Agreement with Tiburon Orion, LLC.

IT IS HEREBY ORDERED that the First Amendment to the Purchase Agreement IS APPROVED with the exception that Eric Gala, through his counsel, may file objections following a review of the said Appraisal. Any and all objections shall be filed and served on interested parties by April 22, 2014 and this Court shall hold a hearing on April 24, 2014 at 9:00 a.m. on the objections, if any.

IT IS FURTHER ORDERED that the portion of the Petition pertaining to transferring the real property equally to the Estate of Norma Gala, a protected person and the Estate of Chester Gala, a protected person, as tenants-in-common, shall also be heard on April 24, 2014 at 9:00 a.m. Any and all objections to that portion of the petition shall be filed and served upon interested parties by April 22, 2014.

Attached to the order was a copy of an amended purchase agreement, in which Tiburon Orion, LLC agreed to a purchase price of \$1,010,000.

On April 22, 2014, respondent filed his objections. In his objections, he noted that the hearing scheduled for April 11, 2014, was adjourned "to allow [respondent] time to locate and have his own appraisal completed." Respondent noted that he had located an appraiser, but he requested another adjournment of 30 to 45 days to have an appraisal completed. Petitioner filed a response to respondent's objections the following day, in which he argued that an immediate resolution was required. Petitioner asserted that there were no funds available to pay for Chester and Norma's care. He also attached evidence that Chester and Norma owed a combined \$70,000 to Autumn Woods Nursing Home.

A hearing was held on April 24, 2014. Respondent again requested an adjournment to obtain his own appraisal. The trial court took evidence to determine if further adjournment were warranted. The real estate broker petitioner hired to sell the property testified that the sale price was a good deal for an unexpectedly high sales price. Petitioner's appraiser testified that the value of the property was \$700,000. Respondent's appraiser testified, but as he had not begun an appraisal, he could not testify to the value of the property. Respondent also presented a real estate agent, who testified that he thought the sales price was "too cheap[.]" but offered no estimate of his own. This agent stated that a higher price could be obtained if the property were rezoned to allow for more residential lots.

The court approved the sale. The court noted that petitioner had provided evidence from a broker and an appraiser stating that the sale price was higher than the true value of the property and that respondent had provided nothing more than conjecture regarding the value of the

property. The court refused to allow further adjournment. The court noted that there was no guarantee that another appraisal would place a higher value on the property. The trial court found there was an urgent need for money to care for Chester and Norma. The court also noted that an adjournment had previously been provided specifically to allow respondent time to obtain an appraisal. On April 29, 2014, the probate court entered an order approving the sale and ordering that the proceeds of the sale be “divided equally between the Norma Gala . . . and Chester Gala . . . Conservatorship Estates[.]”

After respondent filed his appeal in this Court, petitioner filed a motion to dismiss the appeal, or in the alternative, to expedite the appeal. This Court denied the motion to dismiss, but granted the motion to expedite. *In re Chester Gala Trust*, unpublished order of the Court of Appeals, entered June 18, 2014 (Docket No. 321738). This Court subsequently denied respondent’s motion for reconsideration of this order. *In re Chester Gala Trust*, unpublished order of the Court of Appeals, entered August 18, 2014 (Docket No. 321738).

## II. DISCUSSION

### A. ADJOURNMENT

Respondent first argues that the trial court abused its discretion when it denied his request for an adjournment. We disagree. This Court “will reverse the trial court’s decision to deny a continuance or adjournment only if we conclude that the trial court has abused its discretion.” *In re King*, 186 Mich App 458, 466; 465 NW2d 1 (1991). “An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes.” *Keinz v Keinz*, 290 Mich App 137, 141; 799 NW2d 576 (2010).

With regard to this argument, respondent states only that he “feel[s] that [he] should be able to submit an appraisal fair to local market values.” “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority.” *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003)(citations omitted). As respondent has not adequately briefed the merits of his claim, we consider the issue abandoned. *Id.*

Further, on the merits, respondent is not entitled to relief. “A motion for adjournment must be based on good cause, and a court, in its discretion, may grant an adjournment to promote the cause of justice.” *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996) (internal citation omitted). If the motion is based on the unavailability of evidence, a party must move as soon as possible after the facts are discovered. *Id.* To establish good cause, the movant must demonstrate a legally sufficient or substantial reason warranting the request. *In re Utrera*, 281 Mich App 1, 10-11; 761 NW2d 253 (2008). Factors warranting denial of the motion include the granting of prior adjournments, the failure of the moving party to exercise due diligence, and the lack of prejudice from denial of the motion. *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1992). “[T]he trial court’s denial of a request for an adjournment or continuance is not grounds for reversal unless [respondent] demonstrates prejudice as a result of the abuse of discretion.” *People v Coy*, 258 Mich App 1, 18-19; 669 NW2d 831 (2003).

The probate court did not abuse its discretion when it denied respondent's request for an adjournment. Respondent had already been granted an adjournment, a factor weighing against providing a second adjournment. *Tisbury*, 194 Mich App at 20. Respondent also failed to demonstrate due diligence. *Id.* The purpose of this adjournment was to provide respondent the opportunity to obtain his own appraisal. Respondent agreed to a stipulated order that required any and all objections to be received by April 22, 2014, and set the hearing for April 24, 2014. Despite being given this opportunity, respondent failed to present his own appraisal by the time of the April 24, 2014 hearing. Indeed, respondent's attorney indicated that, although an appraiser had been found on April 16, 2014, respondent had not "begun the process of the appraisal . . . ." Given Chester's and Norma's immediate need for funds to pay for their own care and respondent's inability to obtain an appraisal within the timeframe to which he agreed, we must find that the trial court's refusal to grant another adjournment was well within the range of principled outcomes. Accordingly, the trial court did not abuse its discretion when it denied respondent's motion for an adjournment. *Keinz*, 290 Mich App at 141.

Moreover, even if an abuse of discretion were shown, respondent cannot demonstrate prejudice. Petitioner presented the trial court with substantial evidence that the offer of \$1,010,000 was not only adequate; it also exceeded the value of the property. Howard Babcock, the only appraiser to provide an appraisal, testified that the value of the property was \$700,000. Larry Campbell, the broker who negotiated the sale, testified that the sale price of \$1,010,000 provided surprising value for the property. Respondent was given time to present an appraisal on or before a date he agreed to by stipulation, but failed to do so. Instead, he offered the testimony of an appraiser, Ronald Wallis, and a real estate agent, Kenneth Gentile, neither of whom could offer a concrete opinion of the property's value. The only documentary evidence of value respondent provided was a copy of an offer of \$900,000 made on August 5, 2013, which was contingent on rezoning the property. Thus, the evidence presented to the trial court only demonstrated that the sale price of \$1,010,000 was more than adequate value for the property. Respondent also failed to provide an appraisal or any other evidence to this Court that would show that, if given the opportunity to present his own appraisal in the probate court, a different result would occur. Thus, respondent is not entitled to relief. *Coy*, 258 Mich App at 18-19.

Although his statement of questions presented asks whether the trial court erred by refusing his motion for an adjournment, in the body of his brief, respondent asks an entirely different question, which reads, "The appraisal was not comparable due to the unequal economically distressed distant location." We refuse to consider the issue as not being properly raised. "Independent issues not raised in the statement of questions presented are not properly presented for appellate review." *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 404; 628 NW2d 86 (2001). Respondent has also abandoned the issue. Respondent's entire argument regarding this issue is one sentence: "This applies to my case due to unequal economic comparable locations." Respondent offers no authority or further explanation of the argument; consequently, he has abandoned it on appeal. *Houghton*, 256 Mich App at 339. Further, respondent's argument presents nothing more than a challenge to the evidentiary value of the appraisal. This Court defers "to the probate court on matters of credibility, and will give broad deference to findings made by the probate court . . . ." *In re Estate of Erickson*, 202 Mich App 329, 331; 508 NW2d 181 (1993). Respondent's argument lacks merit.

In the last sentence of his argument, respondent states, “MCL 775.15 should apply because of exhausted finances.” MCL 775.15, a section of the Code of Criminal Procedure, MCL 760.1 *et seq.*, allows “any person accused of any crime or misdemeanor” to obtain a subpoena from the trial court ordering a “material witness in his favor within the jurisdiction of the court, without whose testimony he cannot safely proceed to trial” to appear if the “accused person is poor and has not and cannot obtain the means to procure the attendance of such witness . . . .” As this is a probate matter, MCL 775.15 is entirely irrelevant.

#### B. MCL 700.5314

Respondent’s next issue argues that reversal is warranted because MCL 700.5314 required petitioner, as conservator, to discuss the sale with Chester and Norma before agreeing to it. We decline to address the issue. MCL 700.5314 provides, in part:

Whenever meaningful communication is possible, a legally incapacitated individual’s guardian shall consult with the legally incapacitated individual before making a major decision affecting the legally incapacitated individual. To the extent a guardian of a legally incapacitated individual is granted powers by the court under [MCL 700.]5306, the guardian is responsible for the ward’s care, custody, and control, but is not liable to third persons by reason of that responsibility for the ward’s acts.

“Generally, an issue is not properly preserved if it is not raised before, addressed, or decided by the circuit court or administrative tribunal.” *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). Because respondent never raised this argument in the trial court, it is unpreserved. “ ‘Issues raised for the first time on appeal are not ordinarily subject to review.’ ” *Wells Fargo Bank, NA v Null*, 304 Mich App 508, 518; 847 NW2d 657 (2014), quoting *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). This Court will only consider issues not raised below in exceptional circumstances. *Id.* Though “[t]his Court may review an unpreserved issue if it is an issue of law for which all the relevant facts are available.” *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 521; 773 NW2d 758 (2009).

After reviewing the hearing transcript and the evidence submitted to the probate court in connection with the petition, we have found no evidence regarding whether petitioner communicated with Chester or Norma before pursuing the sale or whether it was even possible to communicate with either of them. As the facts necessary to resolve the issue are not available, we decline to address the issue. *Wells Fargo Bank, NA*, 304 Mich App at 518; *Vushaj*, 284 Mich App at 521.

#### C. DISCLOSURE

To the extent it may be understood, respondent’s final issue challenges whether the sale complies with two statutes requiring certain disclosures in connection with real estate transactions. Respondent’s entire argument reads:

Mich. Comp. Laws Ann. § 339.2517(1) – Disclose relationships[.]  
Mich. Comp. Laws Ann. § 565.965 – Disclose relationships[.]

Respondent raised no issue pertaining to these statutes in the trial court, so, again, this issue is not preserved. *Polkton Charter Twp*, 265 Mich App at 95. We find no exceptional circumstances warranting review of the issue and decline to review it. See *Wells Fargo Bank, NA*, 304 Mich App at 518. Respondent has also abandoned the issue by failing to adequately brief it. See *Houghton*, 256 Mich App at 339. In addition, we have reviewed the statutes cited by respondent and have found that the statutes have no relevance to this matter.

We affirm. As the prevailing party, petitioner may tax costs pursuant to MCR 7.219.

/s/ Mark T. Boonstra

/s/ Jane E. Markey

/s/ Kirsten Frank Kelly